STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 99-114

May 11, 1999

ANDREW M. SNYDER
Request For Commission Investigation
Regarding Portland Water District's
Responsibility For The Waterline On
Taylor Lane In South Portland

ORDER

WELCH, Chairman; NUGENT, and DIAMOND Commissioners

I. SUMMARY

We dismiss this complaint against the Portland Water District (District or PWD) because we do not find any rate, charge, or service of the District to be unjust, unreasonable, or inadequate. We therefore decline to investigate this matter further.

II. BACKGROUND

On February 22, 1999, Mr. Andrew Taylor and nine other persons (Complainants) filed a complaint with the Commission pursuant to 35-A M.R.S.A. § 1302. This section allows 10 persons aggrieved by a practice or act of a public utility alleged to be unreasonable, insufficient or unjustly discriminatory, to file a written complaint requesting the Commission to investigate the matter. After giving the utility an opportunity to respond to the complaint, if the Commission is satisfied that the cause of the complaint has been removed or the complaint is without merit, the complaint may be dismissed. Otherwise, the Commission must hold a hearing and resolve the complaint within 9 months, unless the parties are able to resolve the matter to their mutual satisfaction. 35-A M.R.S.A. § 1302(2).

A. Nature of Complaint

The Complainants argue that the water line that serves four homes on Taylor Lane in South Portland should not be considered a private line. Until 1998, the lane was a private road. Upon the request of residents, the City of South Portland accepted Taylor Lane as a public street by an order issued on November 16, 1998. On August 31, 1998, the District filed an affidavit in the Cumberland Registry of Deeds stating that the water line was a private water line. The District also notified property owners on Taylor Lane about the affidavit and that the District was not responsible for the operation and maintenance of the line.

Complainants argue that the water line should not be considered private for the following reasons:

1. There is no record in the deeds or other documents normally reviewed during the transfer of property which indicates the line is not public;

2. The District owns the shut-off valves along the line and the meters at the four houses, thereby "using the line" but not accepting responsibility for the line;

3. The water rates paid by the four residents include money for maintaining lines, and is the same rate paid for customers who receive "full service";

4. The history of Taylor Lane precedes the creation of the District and there has never been a specific determination of the status of the line; and

5. The District's willingness to take over the line if the residents pay to bring it up to current standards is unfair because the District would benefit from the upgrade and residents would be paying for services and infrastructure which are provided publicly in most other areas of the City of South Portland.

The Complainants ask the Commission to determine that the water line is public, in recognition of their payments for water service over the years and Taylor Lane's existence before the incorporation of PWD, and to assign responsibility for the line to either the City of South Portland[1] or the District.

B. Response of the District

The District responded to the complaint on March 11, 1999.[2] The District first argues that 4 of the 10 signers of the complaint are not residents of Taylor Lane and have made no showing as to how they are "aggrieved." Therefore, under section 1302's requirements for 10-person complaints, the complaint should be dismissed.

As to the merits of the complaint, PWD claims that over the years it has consistently treated the Taylor Lane water line as a private line. Since 1948, it has repeatedly refused to allow additional customers to be served off the line and to repair leaks or otherwise maintain the line. According to PWD, the decision of the City of South Portland to accept Taylor Lane as a public street does not change the legal status of the water line. Prior to 1972, all repair and maintenance on Taylor Lane was at the expense of customers living on the lane. Since 1972, the District has allowed the

[1]The Commission is without authority to determine if the City of South Portland is responsible for the line. Therefore, that issue is not addressed in this Order.

[2]PWD was granted a one-week extension to file its response.

four existing customers to maintain individual meters rather than a master meter; read and replaced meters; and made minor adjustments, such as installing shut-off valves.

The District provides the following examples of treating the line as private:

1) In 1971, the District repaired a leak in the line under a “jobbing” order paid for by Taylor Lane customers.

2) In 1989, when an individual proposed to build a new house on Taylor Lane, the District refused to connect him, but offered to pay 50% of the cost of replacing the line with PWD taking over ownership of the water main. The customer filed a complaint with the Commission's Consumer Assistance Division (CAD) about the situation but later put his construction plans on hold and the CAD closed the file without action.

3) In 1989, a customer replaced 150 feet of line at his own expense.

4) In 1991, another leak developed and the District told the four customers they would have to repair it. Again a customer complained to CAD. The customers eventually paid for the repairs and the case was closed at CAD.

The District claims that this line has always been a private line, and the District has always treated it as private line. As such, the line would need to be brought up to utility standards of an 8" main (cost approximately $40,000) if the District were to accept it as a water main.

III. DISCUSSION

A. Jurisdiction

As an initial matter, the District argues that the complaint itself does not meet the requirements of 35-A M.R.S.A. § 1302. Section 1302 allows "10 persons aggrieved" about the rates, acts or practices of a public utility to file a complaint. The District claims because only six individuals signing the complaint are residents of Taylor Lane, there is no indication of what interest the remaining four signatories have in this dispute. Therefore, PWD argues the six residents are without standing to file the complaint, citing our decision on a motion to dismiss in *Yorktowne Paper Mills v. Central Maine Power Company,* Docket No. 95-224, 170 P.U.R. 4th 535 (Me. P.U.C. 1996).

In *Yorktowne,* Central Maine Power Company (CMP) moved to dismiss a 10-person complaint filed on behalf of the Yorktowne Paper Company that was signed

by 42 employees of Yorktowne. CMP claimed that the individuals were not "aggrieved" within the meaning of section 1302. CMP argued aggrieved should be interpreted in the same manner as do courts when determining standing: one must show a particularized injury distinct from the harm experienced by the public at large and which harm flows from an action that operated prejudicially and directly upon the individual. *Id.* at 536. The Commission had employed a similar test in an earlier case. *Medec Ambulance, Inc. v. New England Telephone Company*, F.C. 2509 (Oct. 14, 1980) (finding that nine employees suffered sufficient injury from potential loss of income due to a utility's action). Only two Commissioners decided the Yorktowne motion and because they split on whether the complaint qualified under section 1302, CMP's motion was denied. However, the Commission unanimously decided that, apart from section 1302, the Commission possessed authority to investigate the matter on its own authority granted in 35-A M.R.S.A. §§ 1303, 1309, and that the Yorktowne complaint warranted such further investigation. *Yorktowne* at 537.

We agree in this instance that it is questionable whether all 10 complainants are sufficiently aggrieved to meet the requirements of a 10-person complaint. However, we are willing to examine the complaint under 35-A M.R.S.A. § 1303(1) to determine whether a rate or charge is unreasonable or service provided by PWD is inadequate. We further note that Chapter 65 § 6(D) allows persons with a disagreement or dispute about a water line extension to file an informal complaint with CAD. If the party is not satisfied with CAD's resolution, it may ask the Commission to review it. The Commission then treats such a request for review as a request for investigation under 35-A M.R.S.A. § 1303. Rather than require the Complainants to refile their complaint with CAD, our staff has conducted a summary investigation to determine if a formal investigation is warranted under 35-A M.R.S.A. § 1303(2). The Staff provided its recommendation to the Complainants and PWD on April 14, 1999 for comments or exceptions. Lead complainant Mr. Snyder filed a response on April 23, 1999.

B. Complainants' Allegations

The Complainants claim the water line should not be considered a private line for at least five reasons. Each of these is addressed below.

1. Claim 1 - No notice in Deeds

The Complainants first allege that their deeds and other documents normally reviewed during the transfer of property do not indicate that the line is not public. However, if the line is private, there may have been no occasion for there to be any notice in their deeds. On the contrary, there is no evidence that the landowners along Taylor Lane ever granted an easement to the District to own a line along their property. Under Maine property law, persons owning land abutting a town or private

way are generally deemed to own to the center line of the road, with some exceptions. 33 M.R.S.A. § 465. As such, PWD would need an easement or other right of access for it to install a water line. The fact that the landowners' deeds do not indicate that the line is not public is not dispositive. If a line is private, the owners could install a line on their own property without any reference in their deeds, or at least without reference to a water district.

2. Claim 2 - The District installed meters and shut-off values

In some instances, when more than one customer is served off of a private line, the line has one meter and the property owner charges its tenants for water by including it in rent or a homeowners association charges its members through fees paid to the association. PWD, apparently for the convenience of the residents, individually metered the four homes on Taylor Lane so that each homeowner only paid for the water it used. The fact that the District supplied individual meters does not, by itself, change the nature of the line from private to public.

3. Claim 3 - Rates Paid by Taylor Lane Customers Are the Same as Other Customers

Complainants argue that the four Taylor Lane residents pay the same rates as PWD's "full service" customers, which includes money for maintaining lines. Complainants fail to recognize that all customers receive the same water supply service but the manner in which customers connect to water service differs depending on the circumstances surrounding their initial connection. A home may be built next to an existing main, thereby only requiring a service line for obtaining service. A home may be built beyond an existing main, thereby requiring a main extension if there are other homes likely to be developed in the area. The customer will pay for that extension and turn it over to the District. Or a home may be built beyond an existing main and a single customer may choose a private line extension, where the customer pays the cost of a smaller private line and its maintenance.

All such customers are receiving full service but there are differences regarding how the last distance of service will be provided and who will pay for it. Customers (or their predecessors) served from a private line chose not to invest in a water main extension initially; however, depending on how the line is used, they may be required to pay to upgrade the line in the future. This is the situation facing customers on Taylor Lane.

4. Claim 4 - No determination of the Status of the Line Was Made at the Time the District Began Serving South Portland

The information provided by the District establishes that both the District and homeowners on Taylor Lane have consistently treated the line as private. The District's records show that the line was originally installed in 1893 to serve what is

now 86 Taylor Lane. Service connections were added in 1901 (46 Taylor Lane); 1919 (60 Taylor Lane); and 1948 (76 Taylor Lane).[3] The Portland Water District was chartered by the Legislature in 1907 to serve the inhabitants of Portland, Westbrook, South Portland (as well as other neighboring cities and towns). P.L. 1907, ch. 433. Nothing in the charter required the District to take over or maintain the existing private lines. In 1947, part of the line was replaced at customer expense. In 1971, the District repaired a leak, the cost of which was paid for by Taylor Lane customers.

In 1989, when a customer (Mr. Minot) living at 86 Taylor Lane approached PWD about connecting a new house to the line, the District informed Mr. Minot that he would have to pay to upgrade the service line to a water main status before the District could connect him. This action by the District was consistent with various provisions in Chapter 65. *See*, e.g., Section 1(K)(1) which defines a private line[4] and provisions in Section 2(G), discussed below. Mr. Minot filed a request with the Consumer Assistance Division in August 1989 asking that the Commission grant permission for him to hook into the line at no additional expense to himself and also asking the Commission to determine whether the District should be maintaining the line. In September 1989, Mr. Minot informed CAD that his building plans were on hold, so CAD closed his complaint without any determinations on the merits of his complaint.

In July 1991, Sarah Payson, then a customer at 86 Taylor Lane, filed a complaint with CAD concerning the District's requiring residents of Taylor Lane to repair a leak along the service line. CAD closed the complaint after the customer paid to repair the line.

In May 1997, the four then-current residents of Taylor Lane wrote a letter to the District asking the District to assume responsibility for the line. The District's response was the same as its response to this complaint: that the line is private, the customers served from it are responsible for its maintenance and if those customers pay to upgrade the line, the District would be willing to accept responsibility for it, with the appropriate easements.

On August 31, 1998, the District filed a sworn affidavit in the Cumberland County Registry of Deeds to notify the current Taylor Lane "owners and

[3]Three other undeveloped lots exist on Taylor Lane; two owned by the City of South Portland and one by a Revocable Trust.

[4]K. Private Line. (1) A water line constructed prior to May 7, 1986 across private property to serve one or more customers and not considered by the utility to be a main; (2) except as provided under section 2(C), a water line constructed after May 7, 1986 across private property to serve a single customer, a single multi-unit dwelling complex or a single commercial or industrial development upon which no other person has an easement or other right of access for water line purposes. All other water lines shall be considered mains.

their heirs, successors and assigns, of the private nature of the water line presently serving such properties." The affidavit also stated that, in response to Sara Payson's August 2, 1991 complaint to the Commission, "the Commission determined that the Portland Water District was not obligated to assume responsibility and ownership of the line, even if Taylor Lane should become an accepted Street."

The Complainants are correct that this Commission has never determined the status of the line. The affidavit's statement to the contrary, is incorrect. As described above, in both instances where Taylor Lane customers asked CAD to resolve questions about ownership of the line, the complaints were closed when, in the first instance, the customer withdrew his request and in the second, when the customers made the repair, thereby mooting the issue.[5]

Although the Commission has never determined the status of the line, it is generally not the responsibility of the Commission to do so. Each water utility maintains records on the status of the lines it serves in its service territory. The history of this line demonstrates that the District consistently has treated it as a private line and customers have maintained it as a private line. There is no evidence to suggest it is not a private line, although it is apparent that as properties changed ownership, new owners may not always have been aware of the private nature of the line.

5. Claim 5 - The District's Requirement to Take Over the Line Only if the Customers First Pay to Upgrade it is Unfair

The Commission's Water Main Extension and Service Line Rule, Chapter 65, specifically provides that a private line shall be owned and maintained at the expense of the customer it serves. Chapter 65 § 2(C). That subsection further provides:

> If the utility determines that this line must be modified or replaced in order to meet its specifications or to provide adequate capacity for reasonably anticipated future growth, the utility shall invest in the line, unless it has chosen to make no investment pursuant to 35 M.R.S.A. § 72-A [now 35-A M.R.S.A. § 6106], and the customers served by the line shall provide a contribution as required by section 3 or 4. Any private line which will continue to be used as a main shall be conveyed to the utility without charge. All mains shall be owned and maintained and replaced by the utility as provided in section 2(A) and the utility shall be provided all

[5]The District in its response to the current 10-person complaint states that when the affidavit was filed, the District believed that the Commission had taken a position on the 1991 complaint. However, it now recognizes that because the Commission never made a formal determination, the statement is inaccurate.

> necessary easements. Refusal or failure to comply with the requirements stated . . . shall be grounds for disconnection . . . .

Chapter 65 § 2(C). In 1986, the Portland Water District elected not to invest in main extensions as permitted by 35-A M.R.S.A. § 6106. Therefore, under Chapter 65, if the District determines that an upgrade of a private line is necessary or if another customer wants to be served from a private line, the existing customers would have to pay all costs of construction to upgrade the line before turning it over to the District, as further described in 65 § 3(C). If additional customers are connected within 10 years, the District must collect a contribution from the additional customers and turn that contribution over to the customers who originally paid for the line.

The District's treatment of the line as private and assignment of repair and upgrade responsibilities to the customer served by the line is consistent with Chapter 65's requirements.

IV. CONCLUSION

The history of this line demonstrates that the Portland Water District has treated it as a private line since at least 1947. In the past, it was not unusual for a number of customers to be served off of private lines, particularly on unaccepted streets. The Commission's water main extension rules, as amended in 1987, no longer permit more than one customer to be served off of a newly installed private line. Prior to 1987, water districts sometimes allowed more than one customer to be served from private lines. The District's treatment of the line as private and its requiring that the customers served from the line be responsible for its maintenance is consistent with Chapter 65 of the Commission's Rules. Accordingly, after summarily investigating this matter under 35-A M.R.S.A. § 1303(1), we do not find any rate, charge, or service of the District to be unjust, unreasonable, or inadequate. Therefore, we decline to investigate this matter further under the authority granted under 35-A M.R.S.A. § 1303(2).

Dated at Augusta, Maine this 11th day of May, 1999.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch

Nugent
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320 (1)-(4) and the Maine Rules of Civil Procedure, Rule 73 et seq.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320 (5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.